

Paper Board Specialties, Inc. and United Paperworkers International Union, Local 300, AFL-CIO, CLC. Case 22-CA-18003

March 23, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed by the Union on September 20, 1991 (amended on October 10, 1991), the General Counsel of the National Labor Relations Board issued a complaint on January 7, 1992, against Paper Board Specialties, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Sections 8(a)(1), (5), and 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On February 11, 1992, the General Counsel filed a Motion for Summary Judgment. On February 14, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated January 22, 1992, the Regional attorney for Region 22 notified the Respondent that unless an answer was received by the close of business January 29, 1992, a Motion for Default Judgment would be filed. The Respondent did not file an answer to the complaint.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation with an office and place of business in Paterson, New Jersey, where it has been engaged in the manufacture and nonretail sale and distribution of folding box boards and related products. During the 12-month period from August 1, 1990, to July 31, 1991, a representative period, the Respondent, in the course and conduct of its business operations, purchased and received at its Paterson facility goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of New Jersey and, during the same period, derived gross revenues in excess of \$50,000 directly from customers outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since about January 11, 1990, the Union has been recognized as the exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit, described in Schedule "A" of the parties' current collective-bargaining agreement, which agreement is effective by its terms from January 11, 1990, to January 11, 1993.¹ The Union continues to be the exclusive representative under Section 9(a) of the Act.

Between January 11, 1990, and April 15, 1991, the Union agreed to relax certain provisions of the existing collective-bargaining agreement and, in early March 1991, the Respondent agreed to apply the terms of that agreement effective April 15, 1991. However, since April 15, 1991, the Respondent, without the Union's consent, has failed to continue in effect all the terms and conditions of its collective-bargaining agreement by, inter alia, failing to make pension fund contributions, failing to provide health insurance coverage, failing to reimburse employees for certain medical expenses, and failing to pay employees a shift differential, holiday pay, and other adjustments to wages and benefits.

We find that by engaging in the above-described conduct, the Respondent has engaged in unfair labor practices within the meaning of Sections 8(a)(1), (5), and 8(d) of the Act.

CONCLUSION OF LAW

By refusing, without the Union's consent, to continue in effect all the terms of its collective-bar-

¹ The record does not contain a description of the bargaining unit.

gaining agreement with the Union, including failing to make pension fund contributions, failing to provide health insurance coverage to employees, failing to reimburse employees for certain medical expenses, and failing to pay employees a shift differential, holiday pay, and other adjustments to wages and benefits, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1), (5), and 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to give effect to and comply with all the terms and conditions of its collective-bargaining agreement. The Respondent shall also be ordered to make all pension fund contributions it has not made since April 15, 1991, and to provide unit employees with health insurance coverage. The Respondent shall be required to make whole unit employees by reimbursing them for any expenses they may have incurred as a result of the Respondent's failure to make the necessary pension fund contributions or to provide them with health insurance coverage, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and make them whole for any loss of earnings or benefits they may have suffered as a result of its failure to give effect to and comply with the terms of its collective-bargaining agreement, such amounts to be computed in accordance with the Board's decision in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), with interest as provided for in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Paper Board Specialties, Inc., Paterson, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to comply with its collective-bargaining agreement with United Paperworkers International Union, Local 300, AFL-CIO, CLC, by, inter alia, failing to make pension fund contributions, failing to provide unit employees with health insurance coverage, failing to reimburse them for certain medical expenses, and failing to pay employees a shift differential, holiday pay,

and other adjustments to wages and benefits, pursuant to the March 1991 agreement with the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with and give effect to all terms and conditions of its collective-bargaining agreement with the Union, including making all pension fund contributions that have not been paid since April 15, 1991, providing unit employees with health insurance coverage, reimbursing them for certain medical expenses, and paying employees a shift differential, holiday pay, and adjustments to their wages and benefits, in accordance with its March 1991 agreement with the Union.

(b) Make unit employees whole for any expenses they may have incurred as a result of the Respondent's refusal to make pension fund contributions or to provide them with health insurance coverage, and for any loss of earnings or benefits they may have suffered because of the Respondent's failure to comply with or give effect to the terms of the collective-bargaining agreement, as agreed to in its March 1991 agreement with the Union, with interest as described in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Paterson, New Jersey, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to give effect to or comply with all terms and conditions of our collective-bargaining agreement with United Paperworkers International Union, Local 300, AFL-CIO, CLC, pursuant to our March 1991 agreement with the Union, by among other things, refusing to make pension fund contributions, failing to provide employees with health insurance coverage, failing to reimburse employees for certain medical expenses, and failing to pay employees a shift differential, holiday pay, and other adjustments to wages and benefits.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exer-

cise of the rights guaranteed you by Section 7 of the Act.

WE WILL give effect to and comply with all terms and conditions of our collective-bargaining agreement with the Union, including making contributions to the pension fund that have not been made since April 15, 1991, providing employees with health insurance coverage, reimbursing them for certain medical expenses, and paying them a shift differential, holiday pay, and adjustments to their wages and benefits, in accordance with our March 1991 agreement with the Union.

WE WILL make employees whole for any expenses they may have incurred because of our failure to make pension fund contributions or to provide them with health insurance coverage, and for any loss of earnings and benefits suffered by them as a result of our failure to give effect to and comply with the terms and conditions of our collective-bargaining agreement with the Union, with interest.

PAPER BOARD SPECIALTIES, INC.